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In the Supreme Court of the United States

OCTOBER TERM, 1965.

No. 1259.

WILLIAM R. McKEE,

Petitioner,

vs.

THE NEW YORK CENTRAL RAILROAD COMPANY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals
For the Sixth Circuit.

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The Questions Presented Are of Importance in the Administration of the Federal Employers' Liability Act ---------- 10

1. In order for a railroad employee to recover damages for personal injuries from his railroad employer under the general negligence section of the Federal Employers' Liability Act, 45 U. S. C. Sec. 51, by reason of an unsafe condition of a railroad stairway-platform maintained by the railroad on its premises for the use of such employee to perform his assigned duties, must the injured employee prove by a preponderance of the evidence that his railroad employer had actual or constructive knowledge of the defective condition of such facility causing the injury? ---------- 11

2. Should a railroad employer's duty to inspect a railroad car before requiring its employees to work upon it to determine that the place of work was reasonably safe as already pronounced by this Court be limited only to cars and appliances, or be extended to include all places of employment under the railroad's exclusive control? 11

3. When a railroad employee is injured by stepping into a hole created by a missing board which was part of a fixed-permanent stairway facility maintained by the railroad for the exclusive use of its employees, is the injured employee entitled to have his case submitted to the jury under the res ipsa loquitur doctrine to make a prima facie case of negligence against the defendant under the Federal Employers' Liability Act, even though such employee adduces some proof of specific negligence? ---------- 16

4. If the issues of fact concerning an injured employee's cause of action under the Federal Employers' Liability Act are erroneously submitted to the jury, in that the fact finding function of the jury as to negligence was narrowly restricted to the single issue of knowledge or notice contrary to prior decisions of this Court, does such submission amount to an effective denial of the employee's rights to a jury trial under the Seventh Amendment of the United States Constitution? ---------- 19

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PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals
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Petitioner prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit entered after denial of Petition for Rehearing on February 14, 1966.

OPINIONS BELOW.

The opinions in the Courts below have not been reported. The opinion of the Trial Judge overruling Motion by Petitioner for New Trial is appended hereto as Appendix "A." The opinion of the Sixth Circuit affirming judgment for Respondent is appended hereto as Appendix "B."

JURISDICTION.

The judgment of the Court of Appeals for the Sixth Circuit was filed January 21, 1966, Appendix "C" hereto. A timely Petition for Rehearing was denied on February 14, 1966, Appendix "D." The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254(1).